REMARKS

Without acquiescing to the propriety of the rejections in the Office Action dated April 22, 2004, claims 1 and 23 have been amended and claim 4 has been canceled. Entry of these amendments, reconsideration of the application and allowance of all claims pending herein is respectfully requested in view of the remarks below. Claims 1, 5, 7-13, 15, and 23-25 are currently pending and under consideration.

Informalities:

Applicant gratefully acknowledges the time granted its undersigned representative on June 29, 2004 and July 13, 2004 in which the prior art and pending claims were discussed.

The Office Action objects to claims 1, 5, 8, 9, 10, 12, 13 and 15 because the added underlying limitations and the deleted struck out limitations are not clearly shown. Applicant respectfully submits that the response submitted on March 11, 2004 included properly underlined added portions and properly struck out canceled portions. It is unclear to the applicant how these portions became unclear in the Examiner's copy, but perhaps it was caused by an improper functioning of the sending or receiving fax machine. Attached to the present Response is a copy of the previous Response for the Examiner's information. The amendments in the present Response are made relative to the last filed Response.

Section 112 Rejections

Claim 9 stands rejected under 35 U.S.C. § 112 as containing subject matter which was not described in the specification to convey to one skilled in the art that the inventor had possession of the invention at the time of the filing of the application. Specifically, the "means for inhibiting ...a side of said means for movably attaching ... from rising above a position substantially orthogonal to the mast" is allegedly not described in the specification.

As noted previously, page 5 of the specification describes an angle-maintaining member 25 which maintains mast-attaching member 20 at an angle oblique to a mast 30. Specifically, it is stated that mast-attaching member 20 may be held by angle-maintaining member 25 such that a first end 120 of mast-attaching member 20 is lower than a second end 130 thereof and further first end 120 may be maintained such that it does not rise above a point wherein mast-attaching member 20 is substantially perpendicular to mast 30. It is

respectfully submitted that such description along with original claim 9, which provides its own support, describes an angle-maintaining member which inhibits a side of mast-attaching member 120 from rising above a position substantially orthogonal to a mast. Thus, it is believed that this rejection is overcome.

Claims 1, 4, 5, 7-13, 15 and 25 stand rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, various elements of the claims are objected to as being unclear. It appears that such unclear portions resulted from the malfunction of the fax machine as noted above.

Section 102 Rejections

Claims 1, 4, 5, 8-10, 12, 13 and 15 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Erickson (U.S. Patent No. 4,694,934). Erickson is alleged to disclose a brake, means for supporting, means for attaching, means for movably attaching and an activation member.

Claim 1 of the present application now recites a safety device for a bosun's chair which includes a mast-attaching member moveably attached to a mast of a boat, a brake for braking the mast-attaching member relative to the mast of a boat, and means for at least one of raising and lowering the bosun's chair relative to the mast of the boat. The brake is pivotally connected to the mast-attaching member. An activation member is pivotally connected to the mast-attaching member and connected to the brake. The activation member is connected to a cord connectable to the bosun's chair. The means for at least one of raising and lowering the bosun's chair is connected to an elevated portion of the boat and includes a second cord connectable to the bosun's chair to vertically support the bosun's chair to allow the bosun's chair to be at least one of raised and lowered. The activation member is pivotable to cause the brake to contact the mast to slow a descent of the bosun's chair in response to the cord being connected to the bosun's chair and a force being placed on the activation member by the bosun's chair in response to a failure of the second cord to support a weight of the bosun's chair. The brake is separate from, and operates independently of, the means for at least one of raising and lowering.

Erickson discloses a portable elevating device which includes an anchor 12 which has legs 30, 32 and 34 configured to be secured to a tree. Anchor 12 is attached to a tree using a

member 42 (e.g., a telescopic pole) which positions anchor 12 in a vertical position. After anchor 12 is vertically placed by member 42, a user may ascend the tree by operating a winch attached to an apparatus 10 in which the user is received. The winch is part of apparatus 10 and is attached to anchor 12 by a cord 97. Another cord 100 may be attached to a second attachment position spaced from anchor 12 to provide support to the user in the event that cord 97 or anchor 12 fails, as described in column 6.

However, Erickson does not disclose an activation member pivotable to cause a brake to contact a mast to slow a descent of a bosun's chair in response to a failure of a cord to support a weight of a bosun's chair when the brake and the means for at least one of raising and lowering are separate from, and operate independently of, each other. Instead, the alleged brakes (i.e., spike member 24 and 26 of anchor 12) in Erickson are part of the raising and lowering system. More specifically, anchor 12 is attached to a tree and the winch allows a user to be raised toward or lowered away from anchor 12, but anchor 12 is integral to such raising and lowering of the user. This contrasts with the means for at least one of raising and lowering the bosun's chair recited in claim 1, which is separate from, and operates independently of, the brake recited therein.

Also, cord 100 in Erickson cannot be considered to be a means for raising or lowering, which is separate from anchor 12, because cord 100 does not raise or lower. Instead, the winch attached to apparatus 10 raises and lowers, and cord 100 may be captured by a rope gripping portion 102 of apparatus 10 to slow a descent of a user when an opposite end of rope 100 is attached in an elevated position and anchor 12 or cord 97 fails. Further, the rope gripping portion 102 cannot be considered to be a brake as recited in claim 1, because it does not brake a mast-attaching member relative to a mast, it is not pivotally connected to such a mast-attaching member, it is not connected to an activation member which is connected to the second cord connectable to a bosun's chair, and it is not pivotable to cause the brake the contact the mast to slow a descent of the bosun's chair in response to the cord being connected to the bosun's chair and a force being placed on the activation member by the bosun's chair in response to a failure of the second cord of the means for raising and lowering to support the bosun's chair.

Further, there is no disclosure in Erickson of a mast-attaching member movably attached to the mast of a boat. In fact, there is no disclosure of a boat mast in this reference. Also, there is no disclosure of an activation member connectable to a brake, which is pivotally connected to

the mast-attaching member as stated in the last paragraph on page 4 of the Office Action, nor a brake pivotally attached thereto.

Thus, because the features of claim 1 of the present application (e.g., a mast-attaching member movably attached to a mast, a separate brake and means for at least one of raising and lowering a bosun's chair which operate independently of each other, and an activation member pivotable to cause a brake to contact a mast to slow a descent of a bosun's chair in response to a cord being connected to the bosun's chair and a force being placed on the activation member by the bosun's chair in response to a failure of the second cord to support a weight of the bosun's chair) are not identically disclosed by Erickson, this claim cannot be anticipated thereby. The dependent claims are believed not to be anticipated for the same reasons and for their own additional features.

Section 103 Rejections:

Claim 23-25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Erickson in view of either Rose (U.S. Patent No. 2,745,703) or Turner (U.S. Patent No. 1,409,800). Specifically, Erickson is alleged to show the claimed apparatus except for a pivotally connected activation member to enhance braking.

Claim 23 of the present application recites a safety device for a bosun's chair which includes a mast-attaching member movably attached to a mast, an activation member connectable to a bosun's chair, and a brake configured to brake the bosun's chair relative to the mast. Further, the brake is coupled to the activation member and the mast-attaching member. The activation member is pivotally connected to the mast-attaching member and configured to cause the brake to contact the mast to slow a descent of the mast-attaching member and the bosun's chair in response to the activation member being coupled to the bosun's chair and a force being placed on the activation member by the bosun's chair. The brake is pivotally connected to the mast-attaching member to allow movement of the mast-attaching member in response to a lack of the force.

As noted above, Erickson discloses a portable elevating device which includes anchor 12 configured to be secured to a tree. However, there is no disclosure of an activation member pivotally connected to a mast-attaching member, nor a brake pivotally connected thereto. Instead, this reference discloses anchor 12 which is configured to surround a portion of

other end to apparatus 10 for supporting a person. Member 14 also is connected to a pole 42 which is utilized to raise anchor 12 to allow anchor 12 to be attached to a tree. However, member 14 is not pivotally connected to the remainder of anchor 12.

As noted, the Office Action alleges that in view of Turner or Rose it would be obvious to incorporate a pivotally connected activation member to the device in Erickson to enhance braking. In fact, there is no suggestion or motivation in Erickson which would cause one skilled in the art to seek to add a pivotally mounted activation member. Member 14 is connected to cord 97 and raising member 42 along with a perpendicular member 16 having spikes 24 and 26 thereon. Applicant assumes that any pivotally mounted activating member would be substituted in the region of member 14 in the envisioned combination. As noted, member 14 is connected to raising pole 42 to allow anchor 12 to be located by a user in a particular position on a tree. When anchor 12 has been located, a user may utilize a winch to draw himself upward on cord 97. There would be no reason to add a pivotally mounted activation member since the pivoting of member 14 would make it more difficult to raise anchor 12 on a tree. Specifically, if member 14 was to pivot upwardly when a user pushed poll 47 upwardly, anchor 12 would likely fall thereby making it more difficult to attach anchor 12 to the tree. In fact, raising pole 47 relies on a rigid connection between member 14 and the remainder of anchor 12 to allow proper positioning of anchor 12. Further, there would be no advantage in the raising function of this device to provide a pivoting mechanism, since no advantage would be provided once an anchor was in place which would facilitate a user being elevated on cord 97. Instead, the rigid nature of member 14 would be superior to a pivotable member 14 which might make anchor 12 less stable while a user was attempting to elevate himself using the winch.

Further, Erickson teaches away from the use of a pivotally mounted activation member, since an objective of anchor 12 would be to connect a user as securely as possible to a tree. A pivotally mounted activation member would provide less stability than the anchor including the fixedly connected member 14 disclosed in Erickson due to the movement which would be inherent in the pivotally mounted activation member. In particular, the pivotal nature of the device recited in claim 1 of the present application allows a brake to contact a mast to slow a descent of a bosun's chair. In contrast, the objective of the anchor in Erickson is that it remain in a fixed location once it is raised against a tree and such stability would not be achieved by the movability of a pivotably mounted activation member or brake. Further, the incorporation of the pivotally mounted activation member into member 14 would make such a combination unsatisfactory for its intended purpose of allowing pole member 47 to lift anchor 12. In

particular, the use of a pivotally mounted activation member would complicate the raising of anchor 12 since member 14 would be moveable with respect to the remainder of anchor 12. Such movability would make it more difficult to raise anchor 12 and attach it to a tree since an additional degree of freedom would result from the pivotability which would inherently make it more difficult, relative to a non-pivotally mounted device, to position the anchor soley with the pole.

Moreover, there would be no reason for one to look to the device as disclosed in Turner or Rose to seek to enhance breaking. Specifically, none of the devices disclosed in any of these references provide a brake, which slows a descent of a bosun's chair. In fact, all of these devices are intended to maintain a user at a specific height. In particular, Turner discloses two grab hooks and a downwardly extending portion having a pointed dog 18, all of which extend into a pole to which the platform described therein is connected. The device in Rose is utilized to maintain a user at a particular location to allow him to perform work at a fixed location. The devices in Rose and Turner thus teach away from the features recited in claim 23 of the present application which allow a mast-attaching member to be movably attached to a mast and a brake which is configured to contact the mast to slow a descent of a mast-attaching member in response to a force being placed on such activation member.

Also, Turner and Rose are in different fields that Erickson. In particular, Erickson relates to an elevating device for use on a tree. Rose relates to a platform for attachment to a polish rod for a user to stand thereon, while Turner relates to a platform for use with utility poles. None of these references relate to boats or masts as does the present invention. Turner and Rose are thus in different fields than both the present application and Erickson. Further, these references are not reasonably pertinent to the problem to be solved since they do not relate to a mast-attaching member which is movably attached to a mast and instead they relate to platforms which are fixedly attached to vertical structures.

Moreover, neither Erickson, nor Turner, nor Rose recognize the problem solved by the invention. The mere recognition of the problem of providing a safety device in the event that a primary raising and lowering means fails is strong evidence of the non-obviousness of the present invention. In re: *Nomiya et al.*, 184 USPQ 607, 612-613 (CCPA 1975). In particular, applicant's invention relates to masts of boats and provides safety upon a failure of a primary means for raising and lowering a user. Turner and Rose relate to platforms which are maintained in a specific position. These references do not relate to a necessity to have a safety

problem solved by the present invention because it does not recognize that a bosun's chair on a boat is typically attached to a top mast portion of the boat via a pulley. Such elevation allows a user to work on sails or perform other maintenance necessary on boat. In the event of the failure of such means for raising and/or lowering, the present invention provides a means for slowing a descent of a user in such a bosun's chair via connection to a vertical mast.

Thus, there is no suggestion or motivation disclosed in the cited references which would allow one skilled in the art to combine Erickson with Turner or Rose. Instead, these references are combined with hindsight reasoning which is improper. Further, a combination of a pivotally mounted activation member into the device in Erickson would make it unsatisfactory for its intended purpose and Erickson teaches away from such a pivotally mounted activation member. Accordingly, the references cited cannot make claim 23 of the present application obvious. Therefore, claim 23 is believed to be allowable along with the dependent claims which are believed to be allowable for the same reasons and for their own additional features.

CONCLUSION

In view of the above amendment and remarks, applicant respectfully requests allowance of all claims pending herein.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Examiner is invited to telephone the undersigned attorney at the telephone number provided.

Respectfully submitted,

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